

Trade Practices Alert June 2010

Unfair contract terms - are you ready?

On 14 April 2010 the Trade Practices Amendment (Australian Consumer Law) Act (No.1) 2010 (Cth) came into force. The new unfair contract term regime will apply to consumer contracts entered into or amended on or after 1 July 2010.

The unfair contract term regime applies to all "consumer contracts" that are standard form contracts.

You WILL be ready for the unfair contract term regime on 1 July 2010 IF you have:

- identified any standard form consumer contracts in use by your business;
- reviewed those contracts for any terms that may potentially be considered unfair;
- reviewed the terms of the contract for transparency (as defined in the Act);
- identified and documented the basis on which any potentially unfair term is reasonably necessary in order to protect the legitimate interests of your business; and
- amended or redrafted any unfair terms so that new contracts or variations to old contracts entered into on or after 1 July 2010 are not unfair.

If you have not completed this process, you are at risk that a term in your standard form consumer contract will be found to be unfair and that term will be void. Neither party will then be able to rely on it.

A contract term is "unfair" if the term:

- would cause a significant imbalance in a party's rights and obligations under the contract;
- is not reasonably necessary to protect the legitimate interests of the party advantaged by the term; and
- would cause detriment (financial or otherwise) to the other party if applied or relied upon.

Examples of goods and services sold using standard form contracts which may potentially be affected include:

- utility services (electricity, gas and water);
- communication services (telephony and internet);
- software end-user licences, e-commerce transactions and online auctions;
- transport services, including airline, bus and rail tickets, as well as freight and courier services;
- professional services; and
- residential tenancies.

If you have not undertaken a review of your standard form consumer contracts and would like assistance in doing so, or if you have any questions in relation to the unfair contract term regime, please contact a member of our team.

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